941.

SUPREME COURT OF THE UNITED STATES.

No. 133.

ZEBEDEE RING, DAVID A. BOKEE, ROBERT S. HONE, AND JOHN P. HONE, EXECUTORS OF PHILIP HONE, DECEASED, AND CORNELL S. FRANKLIN, COMPLAINANTS,

vs.

HUGH MAXWELL.

DIVISION OF OPINION BETWEEN THE JUDGES OF THE CIRCUIT COURT UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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GIDEON, Print.

[SEAL.] The President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that we having inspected the records and files of the circuit court of the United States, for the southern district of New York, in the second circuit, do find there remaining of record certain paper writings in the words and figures following, to wit:

Bill of complaint.

Circuit court of the United States for the southern district, and in the second circuit. In equity.

To the judges of the circuit court of the United States for the second circuit, and southern district of New York.

Zebedee Ring, David A. Bokee, Robert S. Hone, and John P. Hone, executors of Philip Hone, deceased, Cornell S. Franklin, of the city, county, and State of New York, and citizens of the United States, bring their bill of complaint against Hugh Maxwell, of the State of New York, and doing business in the city of New York, and a citizen of the United States; and thereupon your orators complain and show unto your honors, that on the first day of July, in the year 1849, the defendant, Hugh Maxwell, having been duly appointed and qualified according to law, as the collector of the port of New York, entered upon the duties of said office and appointment, and continued in such capacity as collector of the port of New York, and in the performance of the duties of said office, up to the first day of May, in the year 1853, a period of nearly four years. That during the continuance of the said defendant in office as the collector of the port of New York for and during said period, and at various and different times, the said defendant as collector of the port of New York collected and received large sums of money in payment of a penalty of 20 per cent. which was lawfully imposed, levied, and exacted by the said defendant under and by virtue of the 8th section of the amended tariff act passed July 30th, 1846, for an under-valuation of goods imported into the port of New York, in addition to the regular duty imposed by law for the importation of said goods according to the true and correct value; and that as your orators are informed and believe, the said sums of money so collected and received by the said defendant in payment of the said penalty of 20 per cent. imposed and exacted by the said defendant for said under-valuation by invoice of goods imported into the port of New York during the period of the continuance in office as collector of the port of New York by the said defendant, amounted in gross to the sum of $130,000 and upwards.

Your orators further show, that one moiety of the said sums of

money so collected and received by the said defendant in payment of the said penalty of 20 per cent. belonged of right, when collected, to the persons who at the time of the levying and collecting thereof filled the offices of collector, surveyor, and naval officer of the port of New York, to be equally distributed by the said collector amongst said officers.

That during the whole of the period of the said continuance in office, as collector of the port of New York, by the said defendant, the said plaintiff, Zebedee Ring, filled the office of surveyor of the port of New York, and became entitled to demand and receive from the said defendant one equal third part of the whole amount of said sums of money so collected by said defendant in payment of said penalty of 20 per cent., during the continuance of said office of collector by the said defendant.

That Philip Hone, now deceased, filled the office of naval officer of the port of New York for a period of nearly two years, commencing 1st day of July, in the year 1849, while the defendant continued in office as collector, and became entitled to demand and receive from the defendant one equal third part of said moneys collected by said defendant during said period of the continuance in office by said Philip Hone as naval officer of the port of New York.

Your orators further show, that the said Philip Hone died in the year 1851, and that the plaintiffs, Robert S. Hone and John P. Hone, have been duly appointed his executors. That your orator, David A. Bokee, filled the office of naval officer of the port of New York from the 14th day of July, 1851, to the first day of May, 1853, and that during the said period he became entitled to demand and receive one third part of all the moneys received by the defendant, as collector, in payment of the said penalty of 20 per cent., which may have been levied and exacted during that period. That your orator, C. S. Franklin, filled the office of naval officer of the port of New York during the interval between the death of Philip Hone and the appointment of David A. Bokee as such naval officer, and became entitled to demand and receive one third of all the moneys collected during that period by the defendant in payment of the said penalty of 20 per cent. as aforesaid.

Your orators further show, upon information and belief, that the defendant, although often requested so to do, has neglected and refused from time to time to distribute said moiety of said moneys, or any part thereof, among the said officers entitled thereto, or any of them, as he was required to do by law, but has paid the same from time to time, by mistake, into the Treasury; and that some time in the year 1853, at its beginning, the said defendant was notified by the said plaintiffs that unless he distributed the said moiety of moneys collected by him as penalties under the 8th section of the act of July, 1846, amongst the plaintiffs in their respective proportions, an action would be commenced for the purpose of recovering the same by process of law.

That subsequently thereto, the said defendant, as collector, com-

municated the said notice, together with a statement of the claims made by the said plaintiffs for the distribution of said moiety of said penalties and an account of the items thereof, to the Secretary of the Treasury at Washington, and requested a decision upon said claims, and instructions to the defendant as to his duty thereupon.

That pending the investigation thereof by the Secretary of the Treasury, the defendant was authorized and directed by said officer to retain out of his daily collections of the revenue a sum which would be sufficient to replace the said one moiety of said amount of penalties, in case it should be decided that the said one moiety belonged to the said plaintiffs, and had been paid into the Treasury by mistake or error instead of being distributed, and to deposit the said amount in some secure place of safe keeping.

Your orators further show, upon information and belief, that subsequently thereto the legality of said claims of your orators, and their right to demand and receive one moiety of the amount of moneys collected by the defendant in payment of said penalty of 20 per cent., as hereinbefore stated, was submitted by the Secretary of the Treasury to the Attorney General of the United States, who examined the said case and questions thus submitted, and on the first day of March, 1853, delivered his opinion in writing thereon, that the said claims of your orators and their right to receive one moiety of said money so collected by the defendant, as hereinbefore stated, was justified by the true construction of the revenue laws of the United States, and that they ought to be allowed and paid, and forwarded said opinion in writing to the Secretary of the Treasury; and that subsequently thereto, the Secretary of the Treasury issued an order, a copy of which is hereunto annexed, marked **A**, and caused a copy thereof to be served upon the defendant on or about the 8th day of March, 1853.

Your orators further show, that subsequently thereto the said defendant retained out of his daily collections of the revenue the sum of $65,000 and upwards, being the one moiety of the moneys which had been collected by him in payment of the said penalty of 20 per cent., exacted and received as hereinbefore stated, and placed the said sum of money in gold coin in a box, and deposited the said box in an iron safe in the office of the cashier of the said defendant, in the custom-house of the city of New York, and forwarded to the Secretary of the Treasury a notice of the same, together with an account of the items of moneys received by said defendant in payment of said penalties during the defendant's continuance in office as collector, and that the said sum of money was so deposited for the purpose of distribution among the plaintiffs, according to their legal rights thereto in their respective proportions.

That on the first day of May, 1853, the said defendant ceased to fill the office of the collector of the port of New York, and that honorable G. C. Bronson was duly appointed to fill said office; and that the defendant has neglected and refused to distribute the said sum of money among the said plaintiffs according to their legal rights, and that the said

sum of money still remains in coin in said box, deposited in the office of the cashier of the collector of New York.

Your orators further show, that they have been informed and believe, that an order has been, or will shortly be made by the Secretary of the Treasury, directing the said sum of money to be deposited in the Treasury of the United States, upon the assumption that they do not of right belong to the plaintiffs, and that their claim for the distribution of the same, according to law, will not be sanctioned by the present administrative officers of the Government; and that if the same should be paid into the treasury, the remedy of the plaintiffs for the recovery of the same by the process of this court, in case of a rendition of judgment in this suit in favor of the plaintiffs, would be entirely defeated.

Your orators further allege, that of the said moiety of the said sum of money so collected and received as aforesaid, the plaintiff, Zebedee Ring, is entitled to receive the sum of $\$21,720\frac{88}{100}$ dollars as his proportion, a share of the said moiety; and the complainant, David A. Bokee, is entitled to receive the sum of $\$9,393\frac{63}{100}$ as his proportion, a share of said moiety; and complainants Robert S. Hone and John P. Hone are entitled to receive the sum of $\$11,424\frac{54}{100}$, being the amount severally belonging to them for the respective periods of filling their respective offices as aforesaid of surveyor and naval officers of the port of New York; and C. S. Franklin is entitled to receive, as his proportion or share, the sum of $\$902\frac{95}{100}$.

Your orators therefore pray, that the defendant may be decreed to account for and pay over unto your orators, in their respective proportions, the said sum of money, being one-half of the amount of 20 per cent. penalty which has been collected, &c., now in the lawful custody of the said defendant as a special fund, according to the interests of the plaintiffs, for the respective periods of their filling the offices of naval officer and surveyor; and in the meantime that the defendant be enjoined and restrained from using or transferring the said sum of $65,000, and upwards, which has been deposited by him in gold in a box placed for safe-keeping, and for the purpose of distribution among your orators, in the office of the cashier of the collector of New York, or in any way interfering therewith, until the final decree of this court in this suit.

May it please your honors to grant unto your orators the writ of injunction, issuing out of and under the seal of this honorable court, commanding and restraining the defendant, and his servants and agents, as is herein before in that behalf prayed.

May it please your honors to grant unto your orators the writ of subpœna, issuing out of and under the seal of this court, directed to the said defendant, commanding him by a certain day, and under a certain penalty, to be and appear in this honorable court, then and there to

answer the premises, and to stand to and abide such order and decree as may be made against him. And your orators will ever pray, &c.

Z. RING,
ROBT. S. HONE,
Executor P. Hone, deceased.
D. A. BOKEE.
A. C. MORRIS,
J. J. RAY, *Of counsel.*

UNITED STATES OF AMERICA,
Southern district of New York, ss.

On the 25th day of May, 1853, before me personally appeared Zebedee Ring, David A. Bokee, and Robert S. Hone, the complainants in the foregoing bill of complaint, who, being by me duly sworn, did depose and say, that they have read the said bill subscribed by them, and known the contents thereof, and that the same is true, except as to the matters which are therein stated on information and belief, and as to those matters he believes it to be true.

JOHN W. NELSON,
U. S. comm'r.

A.

TREASURY DEPARTMENT, *March 2*, 1853.

SIR: The attorney general, in a recent opinion, has decided that the additional duty of twenty per cent., assessed in those cases where the value designated on the invoices presented at the time of entry had been raised by the appraisers ten per cent. in consequence of the cost price being undervalued to that extent, is to be considered a penalty, and that the same is therefore distributable. This department has determined that the said twenty per cent. additional duty, which has been collected and assessed since the passage of the act of July 30th, 1846, is to be distributed agreeably to the provisions of the ninety-first section of the act of 1799, 2d March; and you will, therefore, prepare a detailed statement of all such penalties assessed in your district since the preceding date, with a rest to make the distribution accordingly.

THOS. CORWIN,
Secretary of Treasury.

May 26, 1853.

Ordered that the defendant, H. Maxwell, esq., show cause before me, at my chambers in the (new) City Hall of the city of New York, on the 6th June next, why an injunction should not issue according to the prayer of the bill, and that in the mean time a provisional injunction issue, enjoining the payment to the Government.

S. NELSON.
J. J. RING, *for pl'ffs.*

Circuit court of the United States for the southern district of New York, second circuit. In equity.

HUGH MAXWELL
ads.
ZEBEDEE RING, and David A. Bokee, and Robert S. Hone, and John P. Hone, executors of the last will and testament of Philip Hone, deceased, and Cornell S. Franklin.

The answer of Hugh Maxwell, defendant, to the bill of complaint of Zebedee Ring, and David A. Bokee, and Robert S. Hone, and John P. Hone, executors of the last will and testament of Philip Hone, deceased, and Cornell S. Franklin, complainants.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit or advantage of exception that can or may be had or taken to the many errors, uncertainties, untruths, and imperfections in the said bill of complaint contained, for answer thereunto or unto so much thereof as this defendant is advised it is necessary or proper for him to make answer unto, he answers and says, that at the time of exhibiting the said bill of complaint all of the parties to this suit, as well the complainants as the defendant, were citizens, and every of them was a citizen of the State of New York, and an inhabitant of, and resident within, the said State; wherefore this defendant says, that this court hath not cognizance or jurisdiction of the said bill of complaint, or of the suit thereon founded. And this defendant prays the same benefit of this objection to the jurisdiction of this court as if he had taken or set up the same by plea, demurrer, or otherwise, in a more precise and formal manner.

And this defendant further answering says, that if the said complainants or any one or more of them have or hath any right or just claim to the said moneys claimed in the said bill of complaint and sought to be recovered thereby, or any part thereof, the complainants or complainant having such right or claim might have a complete and adequate remedy by an action at law, and ought to prosecute such right or claim in such an action, and not by bill in a court of equity; wherefore this defendant insists that the said bill doth not contain any matter of equity whereon this honorable court sitting as a court of equity can ground any decree in favor of the complainants, or any of them, and he prays the same benefit of this objection as if he had taken or set up the same by plea, demurrer, or otherwise, in a more precise and formal manner.

And this defendant admits and says, that on the first day of July, in the year one thousand eight hundred and forty-nine, this defendant, Hugh Maxwell, having been duly appointed and qualified according to law, as the collector of the port of New York, entered upon the duties of said office and appointment, and continued in such capacity as col-

lector of the port of New York, and in the performance of the duties of said office, thenceforth until to the first day of May, in the year one thousand eight hundred and fifty-three; and also that upon various imports into the said port of New York which had been actually purchased, and the dutiable value whereof as appraised, estimated, and ascertained pursuant to the eighth section of the act of Congress, entitled "An act for reducing the duty on imports and for other purposes," approved July 30th, 1846, exceeded in each instance, by ten per centum, or more, the value declared on the entry of the same imports respectively in such section referred to; he, the said defendant, as such collector at various and different times during his said term of office, did cause to be levied, collected, and paid unto him pursuant to the same section of said act, in addition to the duties imposed by law upon the same imports respectively, a duty of twenty per centum ad valorem in each instance on such appraised values respectively.

This defendant further says and admits, that the one moiety of the several sums of money so levied, collected, and paid and received by him for such additional duty of twenty per centum ad valorem during his continuance in office as collector as aforesaid, amounted in the whole to the sum of sixty-five thousand seven hundred and sixty-nine dollars and eighty cents.

And this defendant admits, that during the whole period of his, this defendant's said continuance in office as such collector of the port of New York, the said Zebedee Ring filled the office of surveyor of the port of New York; and that Philip Hone, now deceased, filled the office of naval officer of the port of New York, from the first day of July, in the year one thousand eight hundred and forty-nine, until the fifth day of May, in the year one thousand eight hundred and fifty-one; and that the said Philip Hone has departed this life, and that the complainants, Robert S. Hone and John P. Hone, are the executors of his last will and testament, and have been duly qualified as such, and received letters testamentary of the same will from the proper jurisdiction in that behalf; and that David A. Bokee filled the office of naval officer of the port of New York from the fourteenth day of July, one thousand eight hundred and fifty-one, to the first day of May, one thousand eight hundred and fifty-three; and that Cornell S. Franklin filled the office of naval officer of the port of New York from the seventh day of May, in the year one thousand eight hundred and fifty-one, to the thirteenth day of July, one thousand eight hundred and fifty-one.

And this defendant further answering admits, that, although often requested so to do, he, this defendant, has refused from time to time to distribute said moiety or any portion of said moneys so collected for said twenty per cent. ad valorem, or any part thereof, among the said officers claiming to be entitled thereto, as alleged in said bill, or any of them, (but save and except as to the sum of three thousand one hundred and ninety-eight dollars and seventy cents, hereinafter mentioned,) he, this defendant, has paid the same, as received from time to time, into the treasury of the United States, by direction of the

Secretary of the Treasury for the time being, and under the belief that he, this defendant, was bound so to do. And he further admits, that some time early in the year 1853 he, the said defendant, was notified by the said complainants that, unless he distributed one moiety of the moneys so collected by him for said twenty per cent. ad valorem amongst the complainants, in the respective proportions claimed by them, an action would be commenced for the purpose of recovering the same by process of law, as alleged in said bill. And he, this defendant, further admits, that subsequently thereto the said defendant, as collector, communicated the said notice, together with a statement of the claims made by the said complainants for such distribution, and an account of the items of such his collections as aforesaid, to the Secretary of the Treasury, at Washington, and requested a decision upon said claims and instructions to this defendant, as to his duties thereupon.

And he, this defendant, further admits that, after the issuing of the treasury order dated the second day of March, one thousand eight hundred and fifty-three, in the said bill mentioned, this defendant retained, out of his daily collections of the revenue at the custom-house, the sum of sixty-five thousand seven hundred and sixty-nine dollars and eighty cents, to be distributed between said complainants and this defendant in case it should be finally decided that the aforesaid claims of the said complainants were well founded.

And this defendant further answering admits, that on or about the twentieth day of February, in the year one thousand eight hundred and fifty-three, the legality of said claims of the said complainants, and their right to demand and receive one moiety of the amount of the said additional twenty per cent. ad valorem so collected by the defendant, was submitted by the Secretary of the Treasury to the Attorney General of the United States, who examined the said case and questions thus submitted, and on the first day of March, 1853, delivered his opinion in writing thereon, that the aforesaid claims of the said complainants, as in said bill of complaint and herein before stated, were justified, by a true construction of the revenue laws of the United States; and that such claims ought to be allowed, and the one moiety of the said moneys, so collected by this defendant as collector as aforesaid for such additional twenty per centum ad valorem, distributed and paid over accordingly; which said opinion in writing was, on or about the day and year last aforesaid, duly delivered to the Secretary of the Treasury. And he, this defendant, further admits, that subsequently thereto, the Secretary of the Treasury issued an order, a copy of which is to the said bill annexed, marked A, and that the said secretary caused a copy thereof to be served upon this defendant on or about the eighth day of March, one thousand eight hundred and fifty-three.

And this defendant further answering admits and says, that this defendant placed the said sum of sixty-five thousand seven hundred and sixty-nine dollars and eighty cents, so retained by him, in gold coin, in a box, and deposited the said box in an iron safe in the office of the

cashier of this defendant, in the custom-house, in the city of New York, and forwarded to the Secretary of the Treasury a notice of the same, together with an account of the items of moneys received by this defendant in payment of said twenty per cent. ad valorem during this defendant's said continuance in office as collector; and that the said sum of money was so deposited by this defendant for the purpose of distribution among the complainants, according to their legal rights thereto, in their respective proportions, in case their claim to such rights should be finally established.

And he further admits, that on the first day of May, one thousand eight hundred and fifty-three, he, this defendant, ceased to fill the office of collector of the port of New York, and that Greene C. Bronson was duly appointed to fill said office in his place and stead; and that he, this defendant, has not distributed the said sum of money among the said complainants according to their said alleged rights, and that the said sum of money still remains in coin in said box, deposited in the office of the cashier of the collector of New York.

And this defendant admits that an order has been made by the Secretary of the Treasury, bearing date the eighth day of March, one thousand eight hundred and fifty-three, directing the said sum of money to be deposited in the Treasury of the United States, upon the assumption that it does not of right belong to the complainants; and that their aforesaid claim for the distribution of the same will not be sanctioned by the present administrative officers of the Government.

And this defendant further answering says, that of the said sum of sixty-five thousand seven hundred and sixty-nine dollars and eighty cents, so retained by this defendant out of his daily collections, only the sum of three thousand one hundred and ninety-eight dollars and seventy cents was actually levied and collected, paid or received as and for, or on account of such twenty per cent. ad valorem; and that the residue of such sum of sixty-five thousand seven hundred and sixty-nine dollars and eighty cents was by him, this defendant, as such collector, levied and collected for ordinary duties for dutiable goods imported into the said port of New York.

And this defendant further answering says, that, pursuant to the fifth section of the act of Congress, entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year eighteen hundred and forty-one," the said Zebedee Ring, during the time he so filled the office of surveyor of the port of New York, received as such surveyor, from the Treasury of the United States, for himself, over, above and exclusive of the necessary expenses incident to his said office, compensation at the rate of four thousand five hundred dollars per year, for the time during which he held said office, being the maximum compensation allowed by the said fifth section of the said last mentioned act; and that in like manner the said Philip Hone, deceased, in his lifetime, the said Cornell S. Franklin, and the said David A. Bokee, did each receive, as such naval officer, during the period he so filled the said office of naval officer, from the Treasury

of the United States, for himself, over, above and exclusive of the necessary expenses incident to his said office, compensation at the rate of five thousand dollars per year, for the time during which he held such office, being the maximum compensation allowed by the same fifth section.

And this defendant further answering says, that all such necessary expenses were in like manner paid out of the Treasury of the United States to the said Ring, Hone, Franklin, and Bokee, respectively, pursuant to the same fifth section.

And this defendant further answering says, that after the opinion and decision of the Attorney General and Secretary of the Treasury in the said bill mentioned, and before the said complainants exhibited their said bill of complaint, and on or about the eighth day of March, one thousand eight hundred and fifty-three, the Attorney General of the United States, on a submission of the said question to him by the then Secretary of the Treasury of the United States, did in writing determine and declare in his opinion that the said complainants were not entitled to any portion of the said moneys so collected, levied and paid, for the said twenty per centum ad valorem, and delivered such opinion in writing to the Secretary of the Treasury; and thereupon, on the day last aforesaid, the then Secretary of the Treasury issued an order of that date revoking and countermanding the aforesaid Treasury order, bearing date the second day of March, one thousand eight hundred and fifty-three, mentioned in the said bill of complaint.

And this defendant further answering admits, that if, upon the facts stated in this answer, the said claim of the said complainants for a distribution of the whole sum of money contained in said box is valid, in point of law, then the sums to which they are respectively entitled upon such distribution, for their respective shares thereof, are truly stated in the said bill of complaint.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause, or thing, in the said complainant's said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed and avoided, or traversed and denied, is true, to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct; and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

CH. O'CONOR,
Sol'r for def't.

(Copy of stipulation.)

CIRCUIT COURT OF THE UNITED STATES,
For the southern district of New York, second circuit.

HUGH MAXWELL
ads. } In equity.
ZEBEDEE RING and others.

It is hereby stipulated and agreed that the foregoing answer in this cause is received and accepted by the complainants as the answer of the defendant to the bill of complaint filed in this cause, without signature or verification by the said defendant, and that the same be filed accordingly.

(Signed) JAMES J. RING,
Att'y for Pl'ffs.

October 24, 1853.

Endorsed:

SIR: Please to take notice that the within is a copy of the answer of the defendant to the bill of complaint filed in this cause, and that said answer has been duly filed with the clerk of this court.

Dated New York, October 24, 1853.

Yours, &c. CH. O'CONOR,
Sol'r for def't.

To J. J. RING, esq.,
Sol'r for compl'ts.

At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the city of New York on the second day of December, in the year one thousand eight hundred and fifty-three.

Present, the honorable Samuel Nelson, associate justice of the United States, and the honorable Samuel R. Betts, district judge.

ZEBEDEE RING, David A. Bokee, Cornell S. Franklin, Robert S. Hone, John P. Hone, complainants,
vs.
HUGH MAXWELL, defendant.

This cause having been brought on to be heard upon the bill and answer therein, and the questions arising thereon having been argued on behalf of the complainants by Mr. James J. Ring, and on behalf of the defendant by Mr. Charles O'Conor, and the court having considered the premises, were opposed in opinion upon the said questions, which were as follows:

First. Whether, upon a true construction of the Revenue laws of the United States, the additional duties of 20 per cent. which have been

levied and collected by, and paid to, the defendant as collector of the port of New York at the port of New York, as stated in his answer, under and by virtue of the 8th section of the act entitled "An act for reducing the duties on imports, and for other purposes," passed July 30th, in the year 1846, were to be treated as penalties, and one moiety thereof divided between, and paid in equal proportions to and among the collector, naval officer, and surveyor of the port of New York, holding said offices at the time of the levying, collection, and payment thereof in the said port of New York, as claimed by the plaintiffs in their bill in this cause.

Second. Whether the payment to the plaintiffs, respectively, of the amount of their salaries and the expenses of their office, as regulated by the 5th section of the act of Congress entitled "An act making appropriations for the civil and diplomatic expenses of the Government for the year 1841," together with the provisions of the act of February 11, 1846, constituted a bar to the claim of the plaintiffs to receive in addition their share, if any, of the said moiety of the said additional duty levied, collected, and paid under the said 8th section of the said Tariff act of July 30th, 1846.

Third. Whether the circuit court of the United States has jurisdiction to make a decree in this cause for the recovery of the moneys claimed in the bill, notwithstanding the objections to the jurisdiction stated and taken in the defendant's answer, to wit, that all the parties to the action are citizens, residents, and inhabitants of the State of New York, and that there is an adequate remedy in a court of law.

Fourth. Whether the sum of sixty-five thousand seven hundred and sixty-nine dollars and eighty cents, in the bill mentioned, or any part thereof, is bound by, or in favor of the claims of the said plaintiffs in the bill stated, and subject to be applied by or under the decree of this court to the satisfaction of such claims.

Fifth. Whether the decision of the Secretary of the Treasury, made on the second day of March, one thousand eight hundred and fifty-three, in favor of the claims of the plaintiffs, as stated and admitted in the answer, was not final and conclusive upon the defendant in respect to such claims, notwithstanding the order of revocation made by the Secretary of the Treasury on the eighth day of the same month, set up and relied upon in the defendant's answer.

Which said points were, thereupon, upon motion of counsel for complainants, stated, and, under the direction of the judges, ordered to be certified to the Supreme Court of the United States at the sitting next to be held at Washington, for the final judgment thereon there to be pronounced according to law.

All which we have caused, by these presents, to be exemplified, and the seal of the said circuit court to be hereunto affixed.

Witness the honorable Samuel R. Betts, one of the judges of the said court, at the city of New York, in the southern district of New

York and second circuit, this sixth day of December, in the year of our Lord one thousand eight hundred and fifty-three.

J. W. NELSON, *Clerk.*

I, Samuel R. Betts, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit, do hereby certify, that the foregoing exemplification is in due form of law.

SAM'L R. BETTS.